

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Johann Magg et al.
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Examiner: Reginald Alexander
Title: BREWING CHAMBER FOR A COFFEE MACHINE,
AND COFFEE MACHINE

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Commissioner for Patents
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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 – 16 and 18 are cancelled. Claims 17 and 19-36 are pending in the present application. Claims 21, 22 and 35 are allowed. Claims 19, 20, 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. The final rejections of claims 17, 23-27, 29, 31-34 and 36 are being appealed. Claims 17, 21, 32 and 35 are independent.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated August 10, 2009, Appellants filed an Amendment B dated November 9, 2009 traversing the rejections and making minor amendments to claims 24 and 27. The November 9, 2009 Amendment B was not entered. On December 8, 2009, Applicants filed a Request for Reconsideration. The December 17, 2009, Advisory Action indicated that the Request for Reconsideration did not place the Application in condition for allowance. The amendments to claims 24 and 27 in the November 9, 2009, Amendment B are outstanding. Appellants filed a Notice of Appeal on December 18, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 17, is directed to a brewing chamber (page 2, lines 24, 25 and 29-32; page 6, lines 2, 8-15 and 26; page 7, line 31; page 8, lines 4-7 and 17-19; Figure 6, reference number 60) of a coffee machine (page 2, line 22; page 5, lines 27-31; page 6, lines 1-3; Figures 1 and 2, reference

number 10) using a coffee pad (page 2, lines 22 and 29-32; page 3, lines 8, 11-14; page 5, lines 30-31; page 6, line 31; page 7, line 1), the brewing chamber comprising: a top part (page 2, lines 23-25 and 29; page 3, lines 1, 3-4, 9, 22 and 31-32; page 4, lines 2-7; page 6, lines 1-2, 8, 9, 12-14, 16, 22, 26-28 and 31; page 7, lines 1 and 32; page 8, lines 1-2, 5-8, 10, 15, 17 and 19-22; Figures 2, 3, 6 and 7, reference numbers 34, 34'') having openings (page 2, line 23; page 3, line 2; page 6, line 13; page 8, line 15; Figure 7, reference number 67) allowing water to be delivered to the brewing chamber, and an outer seal (page 2, lines 26-27; page 8, lines 18-21; Figure 7, reference number 68); and a bottom part (page 2, line 24; page 6, lines 7-8; Figure 6, reference number 30), wherein the top part is formed as a single monolithic piece of elastic material (page 2, lines 24-25; page 6, lines 9-10; Figures 3 and 7, reference number 34, 34'').

Claim 19 depends from claim 17 and is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Claim 20 depends from claim 19 and is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Independent claim 21 is allowed.

Claim 22 depends from claim 21 and is allowed.

Claim 23 depends from claim 17 and is directed to a brewing chamber wherein the top part has an elevated structure (page 2, lines 29-30; page 3, lines 22-23; page 6, lines 14-15 and 28-31; page 8, lines 10-12; Figure 3, reference number 36; Figure 7, reference number 65) on the side facing the brewing chamber.

Claim 24 depends from claim 23 and is directed to a brewing chamber wherein the elevated structure includes circularly arranged ribs provided with gaps (page 8, lines 10-12; Figure 7, reference numbers 65, 66).

Claim 25 depends from claim 24 and is directed to a brewing chamber wherein the circularly arranged ribs are arranged concentrically (page 8, lines 10-12; Figure 7, reference number 65).

Claim 26 depends from claim 24 and is directed to a brewing chamber wherein the gaps are arranged offset with respect to one another in the radial direction (page 8, lines 12-13; Figure 7, reference number 66).

Claim 27 depends from claim 23 and is directed to a brewing chamber wherein the openings are arranged in the gaps (page 8, lines 13-15; Figure 7, reference number 67).

Claim 28 depends from claim 17 and is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Claim 29 depends from claim 17 and is directed to a brewing chamber wherein a side of the top part facing away from the brewing chamber is adapted to be placed on a housing (page 8, lines 4-8; Figure 6, reference number 62) for the top part.

Claim 30 depends from claim 29 and is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Claim 31 depends from claim 30.

A second embodiment of the invention, as defined by, for example, independent claim 32, is directed to a coffee machine (page 2, line 22; page 5, lines 27-31; page 6, lines 1-3; Figures 1 and 2, reference number 10) for use with coffee pads (page 2, lines 22 and 29-32; page 3, lines 8, 11-14; page 5, lines 30-31; page 6, line 31; page 7, line 1) comprising: a housing (page 8, lines 4-8; Figure 6, reference number 62); a brewing chamber (page 2, lines 24, 25 and 29-32; page 6, lines 2, 8-15 and 26; page 7, line 31; page 8, lines 4-7 and 17-19; Figure 6, reference number 60) disposed within the housing for receiving coffee pads and being at least partially formed by a top part (page 2, lines 23-25 and 29; page 3, lines 1, 3-4, 9, 22 and 31-32; page 4, lines 2-7; page 6, lines 1-2, 8, 9, 12-14, 16, 22, 26-28 and 31; page 7, lines 1 and 32; page 8, lines 1-2, 5-8, 10, 15, 17 and 19-22; Figures 2, 3, 6 and 7, reference numbers 34, 34'') and a bottom part (page 2, line 24; page 6, lines 7-8; Figure 6, reference number 30), the top part being formed as a single monolithic piece of elastic material (page 2, lines 24-25; page 6, lines 9-10; Figures 3 and 7, reference number 34, 34''), having an outer seal (page 2, lines 26-27; page 8, lines 18-21; Figure 7, reference number 68), and having

openings (page 2, line 23; page 3, line 2; page 6, line 13; page 8, line 15; Figure 7, reference number 67) allowing water to be delivered into the brewing chamber.

Claim 33 depends from claim 32 and is directed to a coffee machine wherein the top part of the brewing chamber includes a push-off element (page 2, lines 29-30; Figure 3, reference number 36) disposed near a central portion (page 2, line 30) of the top element, the push-off element bulging downwardly from the top part and providing a downwardly biasing force against the coffee pad to separate the coffee pad from the top part during removal of the coffee pad (page 3, lines 6-10; page 6, lines 20-21), and the outer seal (page 2, lines 26-27; page 8, lines 18-21; Figure 7, reference number 68) extends around an outer perimeter of the top part.

Claim 34 depends from claim 33 and is directed to a coffee machine wherein the push-off element is substantially hemispherical in a stress-relieved state (page 3, line 6; Figure 3, reference number 36).

Independent claim 35 is allowed.

Claim 36 depends from claim 32 and is directed to a coffee machine wherein the top part has an elevated structure (page 2, lines 29-30; page 3, lines 22-23; page 6, lines 14-15 and 28-31; page 8, lines 10-12; Figure 3, reference number 36; Figure 7, reference number 65) disposed on a side of the top part facing the brewing chamber and including circularly arranged ribs provided with gaps (page 8, lines 10-12; Figure 7, reference numbers 65, 66), the ribs being arranged concentrically (page 8, lines 10-12; Figure 7, reference number 65) and the gaps being offset with respect to one another in a radial direction (page 8, lines 12-13; Figure 7, reference number 66), the openings being arranged in the gaps (page 8, lines 13-15; Figure 7, reference number 67).

In contrast to the conventional brewing chamber, an exemplary embodiment of the claimed invention includes a top part having an outer seal, wherein the top part is formed as a single monolithic piece of elastic material (claims 17 and 32). In this manner, the invention improves upon conventional brewing chambers by reducing production costs.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 17, 29, 31 and 32 are unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 3,030,784 (the Fiori reference)
- B) Whether claims 23-27 and 36 are unpatentable under 35 U.S.C. §103(a) over the Fiori reference in view of U.S. Patent No. 3,561,349 (the Endo et al. reference)
- C) Whether claims 33 and 34 are unpatentable under 35 U.S.C. §103(a) over the Fiori reference in view of U.S. Patent No. 5,598,764 (the Bambi reference)

(7) ARGUMENT

- A) Claims 17, 29, 31 and 32 are patentable under 35 U.S.C. §102(b) over U.S. Patent No. 3,030,784 (the Fiori reference)

The Office Action rejects claims 17, 29, 31 and 32 under 35 U.S.C. §102(b) as allegedly being unpatentable over the Fiori reference. Applicants respectfully traverse this rejection.

i) Claims 17 and 29

The Office Action asserts that spring 32 of Fiori corresponds to the claimed outer seal of claim 17. The November 20, 2009, Advisory Action indicates that band 36 of Fiori corresponds to the claimed outer seal. The December 17, 2009, Advisory Action confirms that band 36 is considered to be the element of Fiori that corresponds to the claimed outer seal.

Claim 17 is directed to a brewing chamber that has a top part and a bottom part. The top part has an outer seal. The Office Action asserts that diaphragm 30 of Fiori corresponds to the claimed top part, that base 48 of Fiori corresponds to the claimed bottom part, and that band 36 of Fiori corresponds to the claimed outer seal. Based on these assertions by the Office Action, the brewing chamber of Fiori is formed by diaphragm 30 and base 48 as shown in Figure 2. This being the case, band 36 cannot be the claimed outer seal because it is not

part of the brewing chamber. If band 36 seals anything, it is the joint between upper part 24 of the housing and lower part 12 of the housing. In any event, band 36 is not an outer seal of the Office Action defined brewing chamber.

Claim 29 depends from claim 17.

ii) Claim 31

Claim 31 depends from objected to claim 30. As such, Applicants respectfully submit that claim 31 should also be objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form.

iii) Claim 32

Claim 32 is directed to a coffee machine having a brewing chamber that has a top part and a bottom part. The arguments presented above in response to the rejection of claim 17 also apply to this rejection of claim 32.

Applicants respectfully request reversal of this rejection.

B) Claims 23-27 and 36 are patentable under 35 U.S.C. §103(a) over the Fiori reference in view of U.S. Patent No. 3,561,349 (the Endo et al. reference)

The Office Action rejects claims 23-27 and 36 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Fiori reference in view of the Endo et al. reference. Applicants respectfully traverse this rejection.

i) Claim 23

Claim 23 depends from claim 17. As explained above, Fiori does not teach or suggest the outer seal of claim 17. Endo does not remedy the deficiencies of Fiori. Indeed, the Office Action does not allege that Endo teaches or suggests the claimed outer seal.

ii) Claims 24-26

Claim 24 ultimately depends from claim 17. As explained above, Fiori does not teach or suggest the outer seal of claim 17. Endo does not remedy the deficiencies of Fiori. Indeed,

the Office Action does not allege that Endo teaches or suggests the claimed outer seal.

In addition, claim 24 includes the feature of the elevated structure having circularly arranged ribs provided with gaps. The Office Action asserts that it would have been obvious to combine annular ribs 22 of Endo with diaphragm 30 of Fiori to suggest the claimed circularly arranged ribs. Applicants respectfully disagree with this assertion.

First of all, there is no indication that ribs 22 of Endo have gaps in them. Further, Applicants submit that the purpose of ribs 22 of Endo would be frustrated by gaps in the ribs. The purpose of ribs 22 of Endo is to improve the seal with the coffee package (col. 2, lines 60-63). Gaps in ribs 22 would inhibit such a seal and therefore it would not have been obvious to include such gaps. Further still, Applicants submit that there would have been no reason to improve the seal between diaphragm 30 and coffee pad 72 of Fiori. Since the purpose of the ribs 22 of Endo is to improve the seal between downwardly facing wall 2 and the coffee package, it would not have been obvious to combine ribs 22 of Endo with diaphragm 30 of Fiori.

Claims 25 and 26 depend from claim 24.

iii) Claim 27

Claim 27 depends from claim 23. Claim 27 should depend from claim 24 to provide proper antecedent basis for “the gaps.” Amendment B attempted to correct this typographical error. However, Amendment B was not entered.

Claim 27 ultimately depends from claim 17. As explained above, Fiori does not teach or suggest the outer seal of claim 17. Endo does not remedy the deficiencies of Fiori. Indeed, the Office Action does not allege that Endo teaches or suggests the claimed outer seal.

In addition, claim 27 includes the feature of the openings being arranged in the gaps in the ribs. The arguments presented above in response to the rejection of claim 24 apply to this rejection of claim 27. Also, since the combination of Fiori and Endo does not teach or suggest gaps in ribs, it cannot teach or suggest openings arranged in the gaps.

iv) Claim 36

Claim 36 depends from claim 32. As explained above, Fiori does not teach or suggest the outer seal of claim 32. Endo does not remedy the deficiencies of Fiori. Indeed, the Office Action does not allege that Endo teaches or suggests the claimed outer seal.

In addition, claim 36 includes the feature of the elevated structure having circularly arranged ribs provided with gaps. The arguments presented above in response to the rejection of claim 24 apply to this rejection of claim 36.

Also, claim 36 includes the feature of the openings being arranged in the gaps. As explained above, the combination of Fiori and Endo does not teach or suggest gaps in ribs. As a result, the combination of Fiori and Endo cannot teach or suggest openings arranged in the gaps.

Applicants respectfully request reversal of this rejection.

C) Claims 33 and 34 are patentable under 35 U.S.C. §103(a) over the Fiori reference in view of U.S. Patent No. 5,598,764 (the Bambi reference)

The Office Action rejects claims 33 and 34 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Fiori reference in view of the Bambi reference. Applicants respectfully traverse this rejection.

i) Claim 33

Claim 33 depends from claim 32. As explained above, Fiori does not teach or suggest the outer seal of claim 32. Bambi does not remedy the deficiencies of Fiori. Indeed, the Office Action does not allege that Bambi teaches or suggests the claimed outer seal.

Claim 33 includes the feature of the top part of the brewing chamber including a push-off element disposed near a central portion of the top element, the push-off element bulging downwardly from the top part and providing a downwardly biasing force against the coffee pad. Claim 33 also includes the feature of the outer seal extending around an outer perimeter of the top part.

Applicants respectfully submit that Bambi does not disclose a push-off element bulging downwardly from the top part and providing a downwardly biasing force against the

coffee pad. The Office Action asserts that Bambi discloses a centrally located, flexible bulging element for contacting a filter cartridge in a brewing chamber and that it would have been obvious to combine the bulging member of Bambi with the diaphragm of Fiori. Applicants respectfully disagree with these assertions. Element 9F of Bambi is a screw and element 9H is a perforated metal disk, neither of which is described as providing a downwardly biasing force against a coffee pad.

Further, adding screw 9F of Bambi to diaphragm 30 of Fiori would block many of the discharge openings 76 in diaphragm 30. This would frustrate the main purpose of the device of Fiori, which is to subject a bag 72 to a fluid. As a result, Applicants respectfully submit that it would not have been obvious to add screw 9F of Bambi to diaphragm 30 of Fiori.

Further still, the top part of claim 33 is formed as a single monolithic piece of elastic material. The push-off element is a part of the top part. Combining screw 9F of Bambi with diaphragm 30 of Fiori would not result in a single monolithic piece of elastic material.

Finally, Fiori does not disclose an outer seal that extends around an outer perimeter of diaphragm 30. As explained above, band 36 of Fiori cannot be the claimed outer seal because it is not part of the brewing chamber.

ii) Claim 34

Claim 34 ultimately depends from claim 32. As explained above, Fiori does not teach or suggest the outer seal of claim 32. Bambi does not remedy the deficiencies of Fiori. Indeed, the Office Action does not allege that Bambi teaches or suggests the claimed outer seal.

Claim 34 includes the feature of the push-off element being substantially hemispherical in a stress-relieved state. Applicants submit that screw 9F of Bambi is not substantially hemispherical.

Applicants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1 - 16 (Canceled)

17. (Rejected) A brewing chamber of a coffee machine using a coffee pad, the brewing chamber comprising:
- a top part having
 - openings allowing water to be delivered to the brewing chamber, and
 - an outer seal; and
 - a bottom part,
- wherein the top part is formed as a single monolithic piece of elastic material.
18. (Cancelled)
19. (Objected to) The brewing chamber according to claim 17, wherein the top part has a centrally located push-off element bulging downwardly from the top part and being formed from an elastic material, the push-off element providing a downwardly biasing force against the coffee pad to separate the coffee pad from the top part during removal of the coffee pad.
20. (Objected to) The brewing chamber according to claim 19, wherein the push-off element is substantially hemispherical in its stress-relieved state.
21. (Allowed) A brewing chamber of a coffee machine using a coffee pad, the brewing chamber comprising a top part having openings allowing water to be delivered to the brewing chamber, and a bottom part, wherein the top part is formed as a single integral piece,

wherein the top part has a centrally located push-off element bulging downwardly from the top part and being formed from an elastic material, the push-off element providing a downwardly biasing force against the coffee pad to separate the coffee pad from the top part during removal of the coffee pad, and the push-off element includes a star-shaped element having metal tongues.

22. (Allowed) The brewing chamber according to claim 21, wherein the metal tongues are arranged between openings in the top part of the brewing chamber for entry of water.
23. (Rejected) The brewing chamber according to claim 17, wherein the top part has an elevated structure on the side facing the brewing chamber.
24. (Rejected) The brewing chamber according to claim 23, wherein the elevated structure includes circularly arranged ribs provided with gaps.
25. (Rejected) The brewing chamber according to claim 24, wherein the circularly arranged ribs are arranged concentrically.
26. (Rejected) The brewing chamber according to claim 24, wherein the gaps are arranged offset with respect to one another in the radial direction.
27. (Rejected) The brewing chamber according to claim 23, wherein the openings are arranged in the gaps.
28. (Objected to) The brewing chamber according to claim 17, wherein the outer seal of the top part is executed as a tab-shaped circular lip and the top part comprises a plurality of supporting ribs for preventing an inside surface of the tab shaped circular lip from sticking to other surfaces of the top part.

29. (Rejected) The brewing chamber according to claim 17, wherein a side of the top part facing away from the brewing chamber is adapted to be placed on a housing for the top part.
30. (Objected to) The brewing chamber according to claim 29, wherein the side of the top part facing away from the brewing chamber comprises a projection whereby the top part is adapted to be engaged with a lug in the housing.
31. (Rejected) The brewing chamber according to claim 30, wherein the projection is molded on the top part.
32. (Rejected) A coffee machine for use with coffee pads comprising:
 - a housing;
 - a brewing chamber disposed within the housing for receiving coffee pads and being at least partially formed by a top part and a bottom part, the top part being formed as a single monolithic piece of elastic material, having an outer seal, and having openings allowing water to be delivered into the brewing chamber.
33. (Rejected) The coffee machine according to claim 32, wherein the top part of the brewing chamber includes a push-off element disposed near a central portion of the top element, the push-off element bulging downwardly from the top part and providing a downwardly biasing force against the coffee pad to separate the coffee pad from the top part during removal of the coffee pad, and
 - the outer seal extends around an outer perimeter of the top part.
34. (Rejected) The coffee machine according to claim 33, wherein the push-off element is substantially hemispherical in a stress-relieved state.

35. (Allowed) A coffee machine for use with coffee pads comprising:
- a housing; and
 - a brewing chamber disposed within the housing for receiving coffee pads and being at least partially formed by a top part and a bottom part, the top part being formed as a single integral piece and having openings allowing water to be delivered into the brewing chamber,
 - wherein the top part of the brewing chamber includes an outer seal extending around an outer perimeter of the top part and a push-off element disposed near a central portion of the top element, the push-off element bulging downwardly from the top part and providing a downwardly biasing force against the coffee pad to separate the coffee pad from the top part during removal of the coffee pad, and
 - the push-off element includes a star-shaped element having metal tongues arranged between the openings in the top part of the brewing chamber for entry of water.
36. (Rejected) The coffee machine according to claim 32, wherein the top part has an elevated structure disposed on a side of the top part facing the brewing chamber and including circularly arranged ribs provided with gaps, the ribs being arranged concentrically and the gaps being offset with respect to one another in a radial direction, the openings being arranged in the gaps.

EVIDENCE APPENDIX

None

Attorney Docket No.: 2004P00819WOUS

RELATED APPEALS APPENDIX

None